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## RUSSIAN CIVIL LAW.

### THE FORMATIVE PERIOD.

#### PART II.

The *Russkaia Pravda* of Yaroslav is important as a mirror of ancient legislation and customary law which had become well recognized in principle at the time of its promulgation. It was primarily intended for a body of people known to have come from many countries, although most strongly impressed by Scandinavian and Slavonic ideas and customs. The *wehrgeld* of the Germanic tribes distinctly marked the criminal law provisions, many of which, as well as some relating to civil law, are now familiar as belonging to the ancient laws of Normandy, Denmark, and Jutland. Ewers, in *Das Alteste Recht der Russen*, presents many strong points of resemblance between the ancient laws of Russia and those of the Germanic tribes. There is evidence that the legislator did not intend to present new laws, and the generally accepted view is that Yaroslav contented himself with gathering into durable form the existing customs which time and usage had given the force of law, leaving untouched the primitive simplicity which distinguished them, except where modifications were demanded by the spirit and tendencies of Christianity.

The importance of the family above the individual is manifested in many provisions for punishing criminals, and the class distinctions of the boyars and thanes, the men of the sword, merchants and free workers, and the slaves is clearly established. The relation of master and hired servant is recognized and the right of the latter to quit the employment at will on repayment of advanced wages is given.

The familiar maxim of the English common law as to right of protection of one's private property is thus recognized: "Each citizen has the right to kill within his own property the robber whom he surprises therein at night."

Damages are allowed for the destruction of cattle, boundary fences, trees, bee swarms, etc.

The master is made responsible in damages for the torts of his slaves. A curious example of the law of negligence appears in the clause providing that if a free servant lose a horse of the master, he must pay the latter its value. If a master fail to pay his free servant the wages agreed upon, he can be fined for the benefit of the *fisc* and also be made to pay the wages due.

The commercial law is accorded very great consideration. Among the provisions under that head may be mentioned:

“Creditors whose debts are denied are obliged to support their claims by witnesses, and in case of recovery are entitled to the amount claimed together with damages in the nature of a penalty.”

“In cases of money lending between merchants, the debt being denied, no witnesses are necessary, but the oath of the alleged debtor shall suffice to relieve him of liability.”

“Where an insolvent debtor's goods are sold for the benefit of his creditors, a foreign merchant who has supplied some of the goods in the induced belief that the debtor was solvent shall be given preference in the distribution.”

“If a merchant receive merchandise or money on deposit and the same be lost by *force majeure*, as by flood, fire, or act of the public enemy, he shall not be liable to arrest, but he shall be entitled to a reasonable delay to repay the value of the goods or money lost.”

“Every merchant who by reason of prodigality, drunkenness, or negligence permits goods to be injured while they are deposited with him shall be subject to arrest at the instance of his creditors, and if they do not agree to accord him time, he shall be sold as a slave unless he at once satisfy the claims against him.”

“If a slave obtain money by representing himself as a freeman, his master shall reimburse the innocent victim of the fraud or renounce his right of ownership in the slave.”

“Every master who authorizes his slave to engage in commerce shall be liable for the commercial debts thus contracted by the slave.”

"If a person claim to have left objects on deposit with another, the latter's denial under oath that he received the articles is sufficient to discharge him."

Interest for borrowed money at the rate of 40 per cent. is recognized and made payable every four months.

Laws of Succession: "If a man of low estate die without issue, his property escheats to the public treasury. If he leave male issue, they shall take it. If he leave only female issue, they shall inherit, in proportion, with the public treasury, if they be of marriageable age."

"The Prince shall have no rights in the succession of his boyars nor in that of the officers of his military guard. If they die without male issue, their daughters shall inherit." (The Code does not say whether the treasury or the next of kin shall take in case boyars and officers of the guard die without issue.)

Wills are to be faithfully executed, and many provisions cover the respective rights of widows and children where the former remarry. In case of disagreement among children, the affair is to be left to the tribunal of the Prince, whose right is recognized to delegate his powers as the fountain of justice of the empire to his civil or military officers.

The greater part of the Code is devoted to criminal law and criminal procedure, the most important feature of which is the provision that in every trial the prosecutor must confront the accused before *twelve citizens from the vicinage*, sworn to decide the questions of fact "according to their convictions and the light of their conscience." The officer invested with the power of judge at the trial determines the penalty and orders its infliction. This feature of the sworn jury indicates how much the Scandinavians had impressed their institutions and laws upon the Slavs. Saxo, the Danish historian (1130-1204), says that in the eighth century Ragnar Hodbrok, King of Denmark, was the first to establish a criminal tribunal with twelve sworn jurors. (*Historia Regum Heroumque Danorum.*)

The silence of this work on many crimes, such as murder by poisoning, rape, etc., as well as on many civil matters can be explained only on the ground that the ecclesiastical juris-

diction instituted by Vladimir was respected and that the *Nomocanon* of Photius was sufficient as law and procedure for the clergy. Another limitation arose from the liberal institutions of the large cities where the *veche* or public assembly regulated all matters, administrative and judicial, and were largely governed by "particular" customary laws. None of the many princes, not even the Grand Prince ruling at Kiev, saw fit to abridge these powers of municipal self-government. Indeed, this very Code ratified the ancient privileges of Novgorod in many respects, recognizing that city as a corporate body having the right of internal government not antagonistic to the Crown. While Yaroslav received the distinction of Grand Prince, the other princes were by no means dependent upon him. While he was the greatest landowner and had the greatest military following, because all that was not appenage, fief, or private property belonged to him direct, still the appanaged princes were sovereigns who could support or resist him and were subject to no imposts for his benefit. On the other hand, the lords of fiefs or benefices held their title upon military service, which meant that they must respond to the prince's call with their followers armed, mounted, and provisioned. This gave the Grand Prince a special strength, but not sufficient for him to ignore the power of the lesser princes who wielded quite as much authority in their principalities as he did in his. He was so cognizant of this last fact that he attempted no national measures except by the agreement of all the princes or so many as indicated a combined power superior to those who were opposed. Still, in theory, each prince bowed to no other and was the undisputed sovereign within his own domain, with right to use the formal words with which Yaroslav promulgated the *Russkaia Pravda* originally in his patrimonial city, the "Great Novgorod:" "Respect this ordinance: it must be the rule of your conduct. Such is my will."

This exercise of supreme authority by many chiefs invested with equal rights resulted from the deeply embedded antagonism to the law of primogeniture and which to this day is recognized only in the reigning family, and that but

by force of specific legislation which originated with the principality of Moscow. The title of Grand Prince in base could properly be assumed only by him who was the eldest representative of the line of Rurik.

This principle was the cause of the anarchy into which the whole country was precipitated when Yaroslav died (1054). He had so far impressed his genius and strength upon the other princes that he had practically controlled them and thereby indicated to the world that "Russia had a paramount throne, an acknowledged dynasty, a European religion, and a code." (*History of Russia, compiled from Karamsin, Tooke, and Segur*, by Walter K. Kelly, London, 1885.)

Thus far had the Byzantine theory of political unity represented by one imperial will been carried into Russia, but it was not general, either in its acceptance or application. The splendors and powers of a centralized government at Kiev had not obliterated the ambitions nor the jealousies of the lesser princes, nor had the Scandinavian adherence to equal division among the princely progeny been in fact much weakened. The conditions were very like those of the struggle for recognition as Emperor of the Holy Roman Empire on the part of central European princes, the main difference being that the German princes lacked the strong support of the people at large, such as arose from the Russian veneration for the blood of Rurik.

At the death of Yaroslav an open conflict occurred between the Scandinavian dynastic principle of equal rights in the succession and common right to assume the title of a deceased prince, on the one hand, and the Byzantine imperial theory, on the other. At that time there were nearly a hundred princes of the line of Rurik exercising sovereign rights in their respective territories, many of whom also claimed authority over the principalities of others by reason of elder-ship, as well as the right to the title of Grand Prince and to the possession of Kiev.

Thus began the fratricidal anarchistic struggle that lasted nearly two hundred years. It was, however, but a family quarrel that, in itself, was a manifestation of national unity. The disputants were of the same race and language, notwith-

standing dialectic differences. They were of the same religion, equally agreeing that Christianity through Byzantium was the only true form of worship and that Roman Catholicism and the Latin liturgy were but two manifestations of abhorrent heresy. They all rested their claims to superiority upon the Rurik ancestry and differed only upon the question of who should be the Grand Prince, exercise the traditional rights of patriarch of Russian princes, and rule in Kiev.

“Les guerres civiles elles-memes fortifiaient donc le sentiment de l’unité russe: qu’étaient elles, après tout, sinon des discordes d’héritiers et des querelles de famille?” (*Ram-  
baud.*)

During this contest there were eighty-three civil wars, in many of which the whole country was involved, two hundred and ninety-three princes fought to secure Kiev or some other principality, and sixty-four principalities existed for long or short periods.

The ancient territorial entities which maintained a durable existence throughout the two centuries were Smolensk with its pendant fiefs embracing the sources of the Volga, the Dnieper, and the Duna; Kiev and its princely inheritances; Tchernigov with its two cities, Starodoub and Loubetch; Novgorod-Severski with its dependencies, the double principality of Riazan and Mourom; the republican cities of Novgorod and Pskov with their allied towns; the Caucasian, Tmoutorakan and Sousdalia. The last embraced several cities and a large territory on the Oka and the Volga in the thick forests of the north amid remnants of the Finnish tribes.

The Sousdaliens differed from the Kievians. The latter had mixed their blood with the Turkish nomadic and markedly Oriental stock, while the former had mingled with the Finnish agricultural and essentially sedentary people. It was to those Russians of the northern forests that Russia of the steppes finally bowed in submission, when Andre Bogolioubski, prince of Sousdalia, besieged and sacked Kiev, the venerated “Mother of Russian Cities,” and removed the capital to Vladimir (1169). It meant the appearance of new

men who had no veneration for the older Russia, and resulted in the displacement of the national centre. Indeed, after the fall of Kiev, the country appeared to have strength in but Novgorod, Galicia, and Sousdalia, for that event was but a culmination of military decadence which had already opened the southern country to a new and terrible enemy, whose intermittent successes were soon to be followed by complete triumph. This enemy was the Mongol-Tartar horde. Their definite conquest of the greater part of Russia, after trials of strength with southern princes, placed a barrier between the Sousdaliens and the Black Sea with its Byzantine influences that lasted more than two hundred years (1221-1462).

These Asiatics, with their pagan worship, having become masters of Central Asia under Genghis-Khan, invaded Europe with a mounted army so stupendous in numbers, so fierce in attack, and so cruel in victory that by the middle of the thirteenth century Russia lay prostrate, a victim of internal discord that made united resistance impossible. With Oriental craft the Tartars instituted a system of suzerainty which embraced tribute in taxes and soldiers and the right to decide eldership among the princes. In other respects little attention was paid to the conquered people, even their religious faith being protected and encouraged by the barbarians. Aside from these features the sovereign powers of the princes were exercised upon the ancient bases, although the indirect effect upon Slavonic institutions was considerable, bringing about many changes during the thirteenth and fourteenth centuries. Old principalities lost their boundaries, names indicative of ancient tribal origin gave place to names of territories only. The agricultural class was weighed upon more heavily to meet the capitation tax for which every prince was personally held by the Khan. Default in payment frequently meant death for the prince, devastation of vast districts, and enslavement and transportation of the people.

The reciprocal effects upon the two races themselves were also marked. Communication between Russians and Tartars was frequent. No prince was recognized without the



*jarlik* or letters-patent of the Khan, and the latter's tax-gatherers were always present, strongly supported by a military force. Many of the wandering Asiatics became attracted by the fertile soil, the new civilization, and the Christian religion. They lingered, settled, and married among the Russians. It cannot be doubted that Oriental absolutism, the knout and other cruel punishments, seclusion of women, and the system of poll-tax came with the Tartars. The celebrated Soloviev, in his "*Uchebnaya Kniga russkoi istorii*," specifically comments on "the constant contact and relations of the Russians with Asiatic peoples, providing for the absorption of the latter and for the transmission of their habits." M. Grigoriev, a St. Petersburg professor, writes: "Not only in externals—in dress, manners, and habits of life—did the Russian princes and *boyars*, the Russian officials and merchants, imitate the Tartars, but in everything—their feelings, ideas, and aspirations in the region of practical life—they were in the strongest way influenced by Tartardom . . . so that without acquaintance with real Tartardom it is impossible correctly to understand many phases of Russian history." To the Tartar religious tolerance and respect for the established Church can be traced the great increase in monasteries and the enormous riches of the ecclesiastical institutions which received donations of land and slaves from pious princes and wealthy boyars in exchange for asylum. In 1313 the Khan Usbek confirmed all the former privileges of the Church and prohibited any interference with its judicial powers or its property. This *jarlik* to the Metropolitan Peter provides: "Let no person in Russia insult the metropolitan Church of which Peter is the head, nor the servants of, nor the people owned by, the Church. Let no person take their lands, their goods, nor their serfs, for be it known that the Metropolitan Peter judges according to right and truth and governs his people with justice. In all cases, such as brigandage, misdeeds charged, robberies, in all affairs, in fact, the Metropolitan Peter is alone competent to pass judgment, or one to whom he gives his powers." Then follow exemptions from impost and military service of all Church property and people in the service of or owned by the Church.

During this long period of barbarian domination the princes continued their disputes, and no man arose strong enough to weld the discordant principalities into a national unit. After André conquered Kiev in 1169, Sousdalia maintained its position as the Grand Principality under several princes who reigned at Vladimir, but the inevitable division among surviving sons occurred, and Novgorod, Sousdale, Tver, Vladimir, and Moscow became appanages whose respective princes struggled for supremacy, and in turn resisted the Khan or entreated him for recognition as Grand Prince. It was to George Danilovitch (1303-1326), prince of Moscow, that the fates vouchsafed the title through the grace of the Khan and thus aggrandized the little hamlet founded in 1147 by George Dolgouriki and destined to become the centre of a great empire. Although the *jarlik* of the Khan was still sought and tribute still paid, the Tartar power was at this time sensibly diminishing, and the northern princes were gaining strength in unity that was destined to free Russia. This strength finally became so centred in the hands of Ivan Kalita (1328-1340) as to constitute for historians an epoch-making event. He so far rallied the princes as to secure concerted action in petitioning the Khan to withdraw the Tartar governors. He profited by the example of his brother and predecessor George and became the tax-collector and practical governor for the Khan, thus paving the way for the Muscovite princes to collect and afterwards to hold the taxes throughout Russia and, finally, to succeed to all the rights of the Tartars and to their despotism. Karamsin says: "From Vassili Yaroslavitch to Ivan Kalita (1272-1328), the most disastrous period of our history, the aspect of Russia was that of a gloomy forest rather than an empire. Might took the place of right, and pillage, authorized by impunity, was exercised alike by Russians and Tartars. . . . When the gloom of these horrible disorders began to disperse, and law, that soul of social order, awoke from its lethargy, it was necessary to have recourse to a severity unknown to the ancient Russians. . . . However, as the effect is often more lasting than the cause, the descendants, living under different cir-

cumstances, retain some traces of the virtues or vices of their ancestors, and it may be that the character of the Russians exhibits to this day some of the blots with which the barbarity of the Mongols defiled it" (*"Istoria gosudarstva russiiskavo"*). While the Muscovite princes originally shook off the ancient traditions and, by offering asylum to all adventurers who would take arms under their banners, maintained more of a military camp than a civil government, still the seed of despotism was there and needed only the strong hand of an Ivan Kalita to bring it forth and train it into an absolute tyranny. Yet he was limited, and it was reserved to Dmitri Donskoi to give the fatal blow to the ancient law of succession by the treaty among the princes in 1359, whereby they agreed that son should succeed father and renounced the succession from brother to brother, thus creating the strongest support of an unlimited monarchy. It is true that this treaty was considered so fragile that the approbation of the Khan was obtained, but it held good, and we see the direct line maintained from Dmitri Donskoi, each prince receiving the *jarlik* of the Tartar Chief. This concession of the Khans was the most powerful instrument of their undoing, but its true force was not apparent until the advent of Ivan III, surnamed the Great (1462-1505), who was destined to crush the Horde and free Russia forever from the Tartar yoke. This prince had four avowed purposes: conquest of the ancient Letts, or Lithuanians, who had united with Roman Catholic Poland; subjection and reunion of all appanages; mastery of the republican cities of Novgorod and Pskov, and Russian independence of the Tartars. He accomplished them all and brought Russia once again into the condition of a political unit. But the form was new. The ancient liberty of the people was taken away and all the inhabitants were subject to the will of one man. The folkmote (*veche*) and elected chief magistrates (*posadnik*) of the cities which for centuries had retained their independence by treaty rights among the princes were suppressed and the *mir* of the rural community ignored in administrative affairs. The last vestige of the Varangian ideas of government and laws succumbed to the two hundred years of

Asiatic contact, and became swallowed up in the Oriental despotism of the Muscovite throne. Ivan III strove for unity within and independence without, and he emphasized the accomplishment of his purpose by giving himself the title of "Autocrat" (*samoderjez*) when he had finally broken the chain which bound his country to the Khans. This last achievement is attributed to the persistent encouragement of his Greek wife Sophia. Her marriage with Ivan was of momentous effect upon the whole of subsequent Russian history. She was the niece of Constantine Paleologus, the last Christian sovereign of Byzantium, whose family fled to Rome when Constantinople was captured by the Ottoman Turks in 1453. Pope Paul II, in the hope of bridging the chasm between the Greek and Latin Churches, proposed the marriage and dowered the bride. She took into Muscovy all the traditions of imperialism, and by a strange irony not only embraced the Orthodox faith, but suggested that as Christian Constantinople was no more and she was the heiress of the last of the Cæsars, she was the visible means of transmitting the powers of the Eastern Empire, both political and spiritual, to her husband and the line of Russian princes she was destined to bear. Indeed, it was reported that Sophia's brother, the legal heir to the Byzantine throne, had formally transferred his rights to Ivan, and, lest this should be insufficient, "a genealogy was invented, showing the direct descent of the house of Rurik from Augustus." (Kovalevsky—*Modern Customs and Ancient Laws of Russia*.) At any rate Ivan III was solemnly anointed and given the title of "Tzar," which by some writers is attributed to Tartar origin, meaning king or lord, but by the weight of authority seems to be a corruption of Cæsar,—the name of the Byzantine regents, or active representatives of the rulers. Ivan received the title, but it was not much in evidence during his reign. It is interesting to recall in connection with the claim of Ivan that he became the head of the Eastern Church and successor of the Byzantine emperors by a transfer from his wife's brother, that the Popes claimed the Latin Church and Holy Roman Empire headship through the forgery known as the "Donation

of Constantine," exposed by the Neapolitan priest, Lorenzo Valla, in 1440.

Ivan III did, in fact, assume the political and spiritual headship of both united Russia and the Orthodox Church, and the legend went forth and was believed that Moscow had succeeded Constantinople as that city had succeeded Rome, for after the farcical Florentine Council of 1438 the separation of the Greek and Latin Churches was no longer debatable. The eagle with two heads, which was adopted as the new coat of arms, represented to the people that a new era had begun, in which their sovereign was powerful, infallible, and sacred. It further meant to them that their land had become "Holy Russia" where henceforth Orthodoxy was to perform its mission of protecting Oriental Christianity and breaking the western march of Islam.

With all the successes of Ivan, child of a nomadic race though he was, it would have been strange to find him indifferent to the judicial needs of his empire, especially now that he was the representative of the fallen Roman Empire. Russia of the days of Yaroslav was no longer apparent in this newly united territory where every appanage and every city depended upon a single autocratic will, where the folk-mote was but a memory, and where even matters of state were not always discussed with the Council of Boyars, or *Douma*, whose power in former days had often turned aside the ruler's purpose,—where, in fine, counsel was not sought, but only orders given. The *Pravda* of Yaroslav, with the supplementary decrees of his sons, had faded into oblivion during the "yellow terror," and for more than two hundred years might have been right and justice a mocking name, except in affairs which came within the jurisdiction of the clergy. But this meant little because opportunity for priestly intervention was not so great, nor can it be assumed was so systematic or effective while the whole country was in military subjection, even admitting the religious tolerance of the Khans.

From time to time some of the princes endeavored to replace the ancient laws by *ordonnances* regulating the procedure in their territories, but all such were purely local in

application and temporary in their force. No adequate system of tribunals existed and justice suffered from unlearned officers whose decisions were arbitrary and final. No national judicial legislation had taken the place of the *Pravda* and no guide was known. It is true that in 1397 the Grand Prince Vassili Dmitrovitch had promulgated a judicial charter, but it was of little merit and was, moreover, limited to Moscow and Vladimir.

Some of the lesser princes had also inaugurated some "particular laws" for their own territories, but they were mere utilitarian measures, whimsical and unjust.

Thus Russia was again awaiting the appearance of one with wisdom to conceive and strength to enforce a general system of civil as well as criminal law, whereby the national traditions might once more find expression, so far as it had not been obliterated by the terrible period of Tartar domination.

This need was reserved for Ivan III to fulfil, in addition to his other important achievements. During the first few years of his reign the *Pravda* of Yaroslav was resurrected and consulted, but conditions had so changed that those laws were inadequate. The judges were instructed whenever the *Pravda* was insufficient or inapplicable to make use of the ecclesiastic code known as *Kormtchaia Kniga* (Guide Book), which was originally prepared in 1284, but subsequently supplemented under Ivan III, and has in this form been preserved. It is divided into two parts. The first contains the *Nomocanons* of the Patriarch Photius (ninth century), the Acts of the Apostles, the decrees of the seven Œcumenical Councils (Nice, 325; Constantinople, 381; Ephesus, 431; Chalcedon, 451; Constantinople, 553 and 680, and Nice, 787), and nine Special Councils, including the so-called Quinisextum of Constantinople held in 692, and the Council also held there under Photius in 879 and 880. In the second part are some extracts from the novels of Justinian (sixth century), three novels of Alexis Comnenus (eleventh century), one novel of Constantine the Great (fourth century) on trials, one of Leo the Isaurian (eighth century), and some extracts from the *Epitomen juris civilis* of Harmenopule

(fourteenth century). This work shows to what extent the Greek clergy and scholars had transplanted the Byzantine laws on Russian soil, and is also a manifestation of the modifications wrought upon the Civil Law by the decadence of the Eastern Empire. The *Corpus Juris Civilis* of Justinian (527-565) endured but two hundred years. Then Leo the Isaurian (717-740) produced the Oriental modification known as the *Ecloga*, which in turn, after a century, was moulded into the *Basilica* of Basil the Macedonian (867-886), which, with some few changes by Leo VI (886-912) and Constantine Porphyrogenitus (912-958), remained as the Byzantine Code until the end. Thus the *Kormtchaia Kniga* consisted of excerpts which the clergy compiled early in the fifteenth century for the ecclesiastical jurisdiction. It was also used in the civil tribunals held by the judicial delegates of the princes and received special sanction in trials before the officers of the Grand Prince or Tzar. There is a record showing that the Metropolitan Geronce of Moscow in 1488, in sending before the Court held by the lieutenant of the Grand Prince certain interdicted priests, directed them to be tried "according to the orders of the sovereign, having care to apply the imperial statutes and laws of the Emperors of the East inserted in the ecclesiastic code."

By reason of the indifference of the judges or their desire to follow the remnants of the ancient customary law, complaints arose that they did not consult the *Kormtchaia* in cases where the *Pravda* did not cover cases, and that therefore the decisions were unwarranted by law. This led Ivan III to attempt a general judicial reform. He ordered his secretary (*diak*) Vladimir Goursev to collect all the charters, treaties, and ordinances of the various principalities and cities. These documents presented a multitude of administrative and judicial regulations radically differing, according to date, locality, and the causes which had brought them forth. They were mostly concessions by princes to the lower classes or treaty recognitions of customs common to the people of different princes. The provincial and communal charters of privileges contained a mixture of administrative, substantive, and procedure laws. Most of them had

been called for by specific acts of oppression, and were therefore beyond classification. As to territory, these *ustavnyia gramoty* embraced the ancient charters of the cities of Novgorod (1050) and Pskov (1397) and of many communes, notably of Dvina (1397) and Beloozero (1488), which definitely limited the power of the princely functionaries over the inhabitants. While they contained some specific legal rules, it is manifest that they did not attempt to abrogate nor declare the customary law.

All of these documents were carefully considered under the direction of Jerome, Metropolitan of Moscow, and from them a new code was prepared containing sixty-eight articles which in 1497 was promulgated in the name of the Tzar Ivan III, his children, and the boyars, under the name of *Ulozhenie Zaconn* (Code of Laws). For centuries there was known only the incomplete collection of these articles made by Heberstein in 1556 under the title of *Ordinationes a Joane Bassili magno duce, anno mundi 1006 factæ*. In 1817, however, Count Roumianzoff discovered the manuscript text of the original code, and in 1819 published it at Moscow.

While it appears to have been intended to supplement the ecclesiastic code in substantive law, it contains definite provisions concerning jurisdiction, civil and criminal procedure, crimes, and civil relations, although customary law has little place in it.

Articles 1-36 cover criminal law and the central or sovereign courts; 37-45, provincial courts under the governors or imperial lieutenants, and 46-68, private law and administrative rules.

The following are some of the important sections:

The judicial power is declared to be vested in the Grand Prince, who may delegate it to the boyars.

"The boyars must be assisted by a magistrate, a bailiff, and other honest men elected by the people."

"The defeated litigant may appeal to the Grand Prince, and in case of reversal of the judgment no penalty shall be put upon the judges who first decided."

"The defeated litigant must pay to the judges and their secretaries the tenth of the value of the subject of litigation, independently of the costs of the trial."



Trial by judicial duel is sanctioned with many details in criminal and civil causes between Russian subjects only, but the use of fire-arms is prohibited in those contests.

“He who possesses no property and is unable to pay the costs and penalty to which he is condemned must be delivered to the complainant.”

“Upon the death of a person who has not disposed of his property, it shall devolve upon his sons, if any; upon their default then upon his daughters, and upon their failure then to his nearest kin.”

“He who buys new merchandise in presence of two or three honorable witnesses acquires true ownership though the goods be the product of a robbery.”

“He who remains in undisputed possession of land for three years shall hold it by prescription if the true owner be a simple noble, but six years shall be necessary to give right where the real owner is the Prince.”

*“The free cultivators of the soil and farm laborers shall have the right to leave their masters and pass to other lands, but only during the eight days before and the eight days after St. George’s day.”*

The criminal law provisions embrace torture to obtain confession, and the knout, death, and confiscation as punishments. It is also declared that a robber who has taken flight and afterwards is captured and identified by six honest citizens shall suffer death without trial.

This code is important as a judicial monument. It marks the disappearance of the Scandinavian influence and the ascendancy of Orientalism. The composition of crimes common to the Normans is replaced by the cruel punishments of the Tartars. The terrors of later serfdom are adumbrated in the limitation of removal put upon the peasants. In addition to the provisions of the *Ulozhenie* several matters were dealt with by *ukase*, especially the confirmation of the jurisdiction of the clergy over all persons attached to the service of the church, directly and indirectly, including tenants of clerical lands.

Ivan III left no doubt as to his understanding of the responsibilities resting upon the successors to the Byzantine

imperial dual head. He accepted the theory of divine appointment for both church and state. When the Jewish heresy broke out, headed by the Metropolitan Zosimos, Ivan promptly caused the heresy to be condemned and named another primate.

The united Oriental and still barbarous Russia was passed on by Ivan III to his son Vassili Ivanovitch (1505-1533) with all the acquired attributes of divine appointment as Tsar and Autocrat of church and state. How far the son maintained the despotism of the father is shown by a report that on one occasion a boyar dared to suggest an objection to some administrative measure, whereupon Vassili exclaimed: *Moltchi, smerd!* (Silence, rustic!) He did, however, enlarge and solidify his empire, and promulgated some special laws to supplement the *Ulozhemie Zaconn* and the *Kormtchaia Kniga*.

The oppression and corruption of the judges was cause of much complaint, and it was accordingly decreed that stolen property should be restored to the owner on the arrest of the robber, that suspects should be admitted to bail, that certain rates should prevail in fixing the cost of litigation, that provincial judges should endeavor to reconcile the parties before entertaining suit, and that in Novgorod and Smolensk, where the venality of the judges was most flagrant, there should be selected forty-eight jurors to serve, twelve at a time, at the trials presided over by the *tiouns* (superior magistrates), to see that justice was done.

The earnest endeavors of Vassili to better the empire by administrative and judicial reforms were destined to soon be avoided or ignored together with the older legislation he had sought to broaden. He died leaving as his successor Ivan IV (1533-1584), whose deeds justly brought him the name of the "Terrible." From three to seventeen years of age he rested under the profligate regency of his mother, Helen of Lithuania, and after her death in 1537 was subject to a *Douma*, or Council of Boyars, whose corruption and dissensions not only well-nigh obliterated all that had tended to safeguard the civil relations, but intensified all the elements of Oriental despotism and cruelty. When he as-

sumed the active duties of Tzar he dismissed the vicious *entourage* of the regency, and under the guidance of sound councillors attempted to restore the empire founded by his grandfather. For thirteen years, with the assistance of his special advisers, Alexis Adeshef and the monk Sylvester, he worked for the political, civil, and religious perfection of his country so far as possible within the lines of unity and absolutism to which he was committed. Then came that period of aberration, relieved only by momentary lucidity, which has made the pages of Russian history more lurid than those of any country in all time. The superior energy, however, that marked his whole life enabled him to leave imprints upon his country's institutions almost as praiseworthy as his acts of tiger-like cruelty impressed his personality with abhorrence.

He reorganized the whole governmental system, administrative, military, and judicial, after calling together in 1550 representatives of the people to meet in a general assembly (*sobor*) to consider the needs of the empire. It must not be assumed, however, that this body had any great resemblance to the English Parliament or even to the *États Généraux* of France. It did not represent the whole people, it had no legislative authority, and its acts never got beyond the form of an humble petition to the Tzar. It was hailed as a restoration of the ancient folk-mote, but there was no substantial element in common between them. However, this assembly did convene, as did another in 1566, and they both doubtless served to impress the boyars that the Tzar knew a way to counterbalance and thwart any attempt by them to rule him. His political and civic reorganization measures were logical steps after he had heard "the voice of the country," notwithstanding his power to entirely ignore it. Some explanation of his general government is necessary for a full understanding of his legislative reforms. He gave definite rank to his *droujina*, among whom he selected a special Council of Boyars, or *Douma*. This was the body charged with the execution of his will through various bureaus, each of which (called *prikaz*) managed in detail such affairs as might be referred to it. The most important was the *prikaz*

of the Great Palace, which controlled the finances of the empire.

The revenues were derived from seven sources: the taxes from crown domains, including thirty-six cities and their dependent communes; the *tagla*, or annual tax on each sixty measures of grain; the *podate*, or fixed tax on each *dvor* or hearth; the entrance tax on goods at the frontier and at the gates of cities; the tax on public baths; the license tax on crown taverns; the judicial costs, civil and criminal, and penalties and confiscations for crimes.

The church was governed by the Tzar through the Metropolitan of Moscow, the six archbishops of Novgorod, Rostov, Smolensk, Kazan, Pskov, and Vologda, the six bishops of Riazan, Tver, Kolomensko, Vladimir, Soudale, and Kroutiski. The bishops were chosen from the *black clergy*, or monks of the numerous monasteries who were vowed to chastity, while for the *white clergy*, or parish priests, marriage was obligatory.

The army was divided into two principal classes. The first consisted of the "men of service" (*slougilie liudi*), or gentlemen who were owners of land, whether originally as fiefs (*pomiestie*) or as freeholds (*votchini*), the distinction between these ancient tenures having practically been abolished by general subjection to military or civil service of all landlords. As they were obliged to support themselves out of the revenues of their estates, it sometimes happened that a favored soldier of low rank was made a gentleman and a fief conferred upon him. The second class was composed of the lower people who were divided into two groups,—the *datotchnie*, being the peasants of the monasteries, churches, and crown lands, and the *streltsi*, or communal militia. The humble people, those whose toil supported in anguish and silence this great empire whose head they looked upon as the incarnation of the Divine Will for the protection of orthodoxy, were of three classes: (1) The *kholop*, or slave, properly so called, being the *mancipium* of the Romans—one taken in war, sold by himself or by another, or born of *kholopi*; (2) the inscribed peasant (*krestianin*), or copy-hold tenant of a noble, similar to the Roman *colonus*

*adscriptum*, legally free in person, but who has been subjected to the lord that the latter's land may yield sufficient to enable him to perform his military service, and (3) the free cultivator or farmer of the land of others on a rent charge or service—one possessed of the right to change masters. The last two were already subject, as before mentioned, to legislation regulating the manner and times in which they might exercise their freedom to change masters. The rural population consisted most largely of the inscribed peasants, and among them remained longest the traces of early Slavonic institutions, which indeed have never been entirely obliterated. The household, the village, and the commune or *mir* were still based upon the same principles of solidarity, all in turn responsible to the lord and the Tzar. The change was in the administration. The chief of the *mir* was the *staroste*, a name and an office emanating from the higher stratum and originally as unknown to the rural people as it was to the city inhabitants, who were likewise subject thereto. It is true that the elective franchise was permitted to a limited degree in local fiscal, police, and judicial affairs, but that was merely returning to the days of Yaroslav and the ancient customs which the lower classes cherished as a tradition. Says Rambaud: "L'antique barbarie était encore intacte dans ces populations ignorantes: les coutumes gracieuses ou les mœurs sauvages, les superstitions poétiques ou atroces des anciens Slaves s'y perpétuaient. Le paysan russe restait païen sous son écorce d'orthodoxe" (*Histoire de la Russie*).

By remoulding the remnants of former customs and laws and adding thereto new ideas, Ivan IV inaugurated a fairly definite judicial system for his whole realm.

Three classes of courts were instituted: the tribunals of the district *staroste*, a magistrate whose jurisdiction covered a hundred ploughs,—i.e., tillable fields; the court of *voievode*, or governor in each provincial chief town; and the supreme court at Moscow, composed of a certain section of the *Douma*. Certain officers were attached to these tribunals, known as *diaks*, who were learned secretaries recognized as a special order called upon to assist in all depart-

ments of government from the district court to foreign embassies. It must be understood, however, that while definite judicial attributes attached to these tribunals, they were likewise instruments of government in purely administrative business.

The next step was the publication of a *Sudebnik*, or Book of Laws, in 1554, which was intended to be a revision and amendment of the *Ulozhenie* of Ivan III. It contains decided evidence of advancement towards equitable civil legislation, and it is recognized as elemental in Russian judicial history. The hundred articles composing it have little regularity as to subject, procedure being mingled with civil, criminal, and administrative laws without any attempt at grouping. As in all former collections, criminal law forms the greatest part and is remarkable for its cruel punishments, some of which are provided for dishonest practices of judges and their assistants. Following the *Ulozhenie*, the methods of proof by witness, oath, judicial duel, and chance are recognized for both civil and criminal causes. Conciliation likewise is reaffirmed as a guiding principle for all judges.

For the first time a distinction is made between property inherited and that acquired by contract.

"All persons dealing for money with another must consult the register containing the names and resources of citizens, and if suit be brought to recover a sum disproportioned to the defendant's resources, it shall be dismissed at the cost of the complainant."

"The children of a father who has alienated his liberty after their birth shall remain free. The liberty of the sons of boyars and their descendants shall be inalienable and unaffected by lapse of time."

"All free peasants who change from one proprietor to another shall pay to the proprietor they quit two *altines* per house in addition to the indemnity required of them by the village they leave. They shall have the right to sell themselves to landed proprietors as serfs."

"Any attempt to assail the honor and consideration due a citizen shall be punished in damages to be assessed by the Tzar and according to the position and fortune of the

offended party. If a woman be the object of the attack, the damages shall be double what her husband would have been allowed."

It was provided that the Code should not be retroactive and that future laws would be promulgated to meet cases not covered.

This intention was carried out and many important additions were made during the next twenty-five years. These amendments decreed as such to form part of the Code number fifteen, among which are the following:

"The deposition of five or six persons who are little known shall not be sufficient to condemn an accused, but the declaration of a boyar, a diak, or a public official shall always be considered as worthy of belief, and no one shall charge them with invention."

"A debtor owing one hundred roubles may demand a delay of one month in which to pay: if he be in the service of the crown, the time shall be two months. At the expiration of the time, if the debtor have not paid, he shall be delivered to his creditor to be held until payment, but his slavery shall not last during his whole life."

Interest is reduced from 10 per cent. to 5 per cent. for debts contracted by hired servants.

"If there be no issue living at the death of a wife, her husband shall restore to her parents the marriage portion he received with her, but without interest."

"He who after notice neglects to pay a debt for which effects have been pledged shall suffer them to be sold and shall use his other property to complete the sum if the whole debt and interest of the pledged property do not sell for enough."

"Where land has been affected with the discharge of an obligation and the parties have agreed that the creditor may sow and reap the land instead of receiving interest, in consideration of the present condition of debtors, we order that all such land shall be restored to the proprietors without the right to alienate the same, and if the debt be not satisfied within the next five years, the land shall again become subject to the same charge as before."

"If a married woman name her husband as executor of

her last will, expressed in writing, her testamentary act shall be void because the wife is under the power of her husband and it is presumed that, in this case, she has not acted freely."

"Contentions that arise between inhabitants of different cities in the same province shall be decided by the officers of the Tzar; if they inhabit the same city, the governor shall be competent to pass judgment. This shall apply in civil matters. If, on the contrary, it be a criminal cause, decision shall be given in the place where the complaint has been lodged."

It is apparent from the foregoing that there existed official records of transactions concerning real property, such as evidenced rights of title and possession, mortgages and contracts of sale, and that registers were kept, showing the civil status of inhabitants together with their resources.

Two important edicts were subsequently issued as expressions of the autocratic will without reference to the *Sudebnik*. They merit particular emphasis. The first was in 1556. It suppressed the fees which theretofore had been indiscriminately levied on litigants by the judges for their own profit, and caused justice to be administered gratuitously, fixing the emoluments of officers and providing a general provincial assessment therefor. Judges were made elective in cities and villages. Judicial combats were prohibited in all criminal cases where the judges could "discover the truth by the deposition of witnesses or by proffering the oath" (*i.e.*, permitting the accused to be sworn where witnesses failed). Finally the edict inflicted the knout on all persons convicted of perjury and also imposed heavy fines.

The second edict was in 1557 and, while primarily intended as a corrective measure for the inhabitants of Kolmogore, contained this general law:

"The heads or judges of the people, who fear not to abuse their authority over their fellow-citizens by oppressing them or subjecting them to unjust vexations, will be punished with death."

These measures were in themselves a confirmation of the charge of unbridled corruption of the judges so much complained of by the people of all grades.

As an evidence of the part taken by the people at large in



matters pertaining to justice it may not be irrelevant to mention another innovation of this reign. By the "*Edicts of criminal procedure*," which were addressed to the provincial judges (*voievodes*), it was ordered that the officials charged with holding a court should as a preliminary step "proceed to a general inquest." This they did (following the instructions) by assembling "the notable inhabitants of their jurisdiction, such as the princes, the children of boyars, the abbots, priests, and the most honorable citizens of each commune," who were obliged "in kissing the holy cross" to denounce all the robbers and persons without civil status known to them. The declarations made by the members of this odd form of grand jury were registered and thereupon the persons so accused were brought to trial.

One is impressed with the meagreness and the fragmentary character of the articles of the *Sudebnik* and the supplementary edicts compared with what must have been the scope of civil relations, but this was caused by two reasons: One was the force still exerted by the purely customary law cited from the memory of aged men and applied in disputes between the people below the noble class. The other was the scope of the ecclesiastical jurisdiction, which embraced many cases that in other countries would be cognizable only by the lay tribunals. This clerical field formed a distinct branch of the judicial power, and while Ivan IV did not disturb the general principles, he did leave indelible traces upon Church institutions of his energetic activity and foresight. His first step was to remind the bishops and the archimandrites that they had no right to acquire domain without the consent of the Tzar, and that as they had during the regency and turbulent times of his minority ignored this law, they must restore all lands, villages, and fisheries so acquired. His views are clearly expressed in a letter he sent to the bishop of Kazan, of which the following is an excerpt: "Hearts and not lands are what the churchmen should cultivate. It is not grain they ought to sow, but the divine word. They are destined to have for inheritance the realm of heaven and not lands and villages. On the contrary, the most of our bishops think of their temporal possessions rather than of the spiritual interests of the Church."

After the *Sudebnik* had been promulgated, his special attention being arrested by abuses among the clergy, he constituted an Ecclesiastical Commission to report necessary reforms. The result was the *Stoglav*, or "Book of the Hundred Chapters," which was intended to remedy some evil practices arising from the indifference of the priests, eliminate some remnants of pagan superstitions in the forms of worship, and establish a higher moral standard for all men of the cloth. There was no attempt to form a new Canonical Code and no article diminished the authority of the early *Kormtchaia Kniga*.

The *Stoglav* was only temporary in its force and cannot be said to have had any lasting effect on the substantive laws or procedure. Its only permanency resulted from those features that partook of discipline. A most important incident of the existence of the Commission was the establishment of what almost deserves the appellation of a national school system. The clergy having been assembled, the better class utilized the occasion for the projection of this very advanced measure, and it was approved by the Tzar. It was provided that elementary schools should be maintained, where children could learn how to read, write, and be trained in choral singing and specially instructed in the Scriptures,—not all children, but only those of noble rank! The peasant child was left to his ignorance and superstitious veneration of the Church rites, and to his sullen Oriental fatalism, so intensified in that complete slavery which was soon to follow.

As if the blood of Rurik had spent its force in Ivan IV, that monarch transmitted the Russia of his ancestors and the newly acquired Siberia to a weakling. His son, Feodore (1584–1598), was of such extreme piety as a man and timidity as a sovereign, that little would have been recorded of his reign had he not confided the government to his ambitious and unscrupulous brother-in-law, Boris Godunov, of Tartar descent, as regent. Nor would the legal scholar find much to arrest his attention even during the domination of that master dissembler, were it not for his severance, *de facto* and *de jure*, of the Russian Church from Constantinople, to which it still nominally adhered, and for his edicts enslaving the peasantry (*krestiane*). He deposed the metro-

politian Dionisius of Moscow and elevated his partisan Job to that dignity, but not content with that, while entertaining Jeremiah, the Patriarch of Constantinople, who was visiting Moscow in 1588, he induced him to sanction the founding of the Patriarchate of Russia, and accordingly proclaimed its establishment and independence of the time-honored spiritual capital of the Eastern Church.

In 1593 he abrogated the law under which the peasants could migrate from one village to another, and decreed that henceforth the *krestiane*, as well as the *kholopi*, should be considered as serfs of their masters.

This was followed by the edict of 1597, which provided for a tribunal of serfs, ordered that all bondsmen should be there registered, that "all the boyars, the princes, the nobles, the civil and military officials" should have absolute power over their domestic servants, that even free servants, who had been in the service of a master for the prior six months, should be considered serfs, and finally the most rigorous measures were prescribed in order that "the lords" might "be able to regain possession of such of their peasants" as had taken flight during the previous five years, "together with their wives, their children, and their movable property." Thus was decreed the "bondage to the soil" (*krepostnoie pravo*). Individual liberty was called upon to make its last great sacrifice to the state.

This was all done in the name of Feodore, the last of the House of Rurik. The capstone of the edifice was too heavy: the structure that had been seven centuries in building was crushed in a single decade.

At this point stops the period of preparation for modern Russia. Nomadic tribes have become sedentary and united, scattered territories have been welded into a vast continuous realm, paganism has been superseded by Christianity, unlettered peoples have risen to a written language, varied dialects have begun to form a common language with every promise of its early recognition, yet superstition, corruption, and fatalistic submission to oppression mark the great mass and promise abundant results for wise and enlightened legislation.

*William W. Smithers.*